

MEMORANDUM

Agenda Item No. 8(A)(8)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

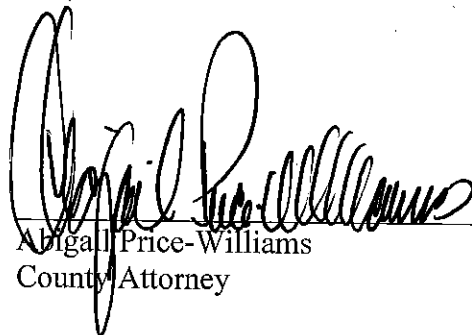
DATE: May 17, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving the Fourth Amendment to the non-exclusive Food and Beverage Lease Agreement with Areas USA MIA LLC, for premises at Miami International Airport; standardizing the contract term methodology for recalculation of the minimum annual guarantee utilized in similar lease agreements; reducing the Taxi Lot Snack Bar category percentage from eight (8) percent to four (4) percent; and authorizing the County Mayor to exercise all provisions therein

A substitute was presented and forwarded to the BCC with a favorable recommendation as corrected at the 4-14-16 Trade and Tourism Committee. This substitute differs from the original version as stated in the County Mayor's memorandum.

The accompanying resolution was prepared by the Aviation Department.



Abigail Price-Williams
County Attorney

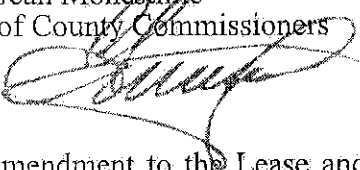
APW/cp

Memorandum



Date: May 17, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Retroactive Fourth Amendment to the Lease and Concession Agreement with Areas USA MIA, LLC at Miami International Airport

This substitute differs from the original in that it adds language reducing the Taxi Lot Snack Bar category percentage from eight (8) percent to four (4) percent.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the retroactive Fourth Amendment to the Lease and Concession Agreement with Areas USA MIA, LLC (Areas) at Miami International Airport (MIA). This amendment changes the methodology for recalculation of the Minimum Annual Guarantee (MAG) to the Consumer Price Index (CPI) as used in other MIA concession agreements and reduces the Taxi Lot Snack Bar category percentage from eight (8) percent to four (4). It is further recommended that the Board authorize the County Mayor or the County Mayor's designee to execute the Amendment, substantially in the form attached.

Scope

MIA is located primarily within District 6, which is represented by Commissioner Rebeca Sosa; however, the impact of this agenda item is countywide as MIA is a regional asset.

Fiscal Impact/Funding Source

This is a revenue-generating contract for Miami-Dade County. Areas owes the Miami-Dade Aviation Department (MDAD) a MAG of \$1,830,315.00. This Amendment will establish a new MAG amount of \$1,521,743.00, retroactive to November 1, 2013, to be adjusted annually by the CPI.

Track Record/Monitor

Areas is meeting all contract obligations. The MDAD staff member responsible for monitoring this agreement is Adrian Songer, Chief of Business and Revenue Development.

Compliance Data

Inquiries through MDAD Minority Affairs and the Department of Small Business Development (SBD) reveal no violations for this firm.

Background

Pursuant to Resolution No. R-196-06, on February 7, 2006, the Board approved the award of Foodservice Concessions RFP No. MDAD-01-05 to Areas USA, Inc., now known as Areas USA MIA, LLC. The First Amendment approved by Resolution No. R-13-10 adjusted the MAG and rent to offset decreased passenger volume beyond the control of the concessionaire. The Second Amendment approved by Resolution No. R-287-11 extended the term of the original Agreement to compensate Areas

for time lost due to a delay in MDAD's construction in the North Terminal. The Third Amendment approved by Resolution R-96-14 revised the term commencement dates for all impacted North Terminal concessionaires to September 14, 2014, to compensate for losses stemming from construction delays.

This Fourth Amendment changes the basis of the recalculation of the MAG from enplaned passengers to an annual CPI calculation, as used in the other MIA concession agreements to provide parity among all concessionaires. This amendment will establish the new MAG amount of \$1,521,743.00 retroactive to the CPI anniversary of November 1, 2013. Areas alerted MDAD to this MAG issue in November 2013. This began a process of meetings and negotiations over an 18-month period to reach an understanding of how best to approach this issue. In the middle of this process, Areas was being audited by Audit and Management Services which required MDAD to divert its attention from the issue to respond to the audit findings before moving forward with the Amendment. The audit revealed no abnormalities. The Fourth Amendment is also intended to assist the Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) operator of the Taxi Lot Snack Bar by reducing the percentage fee paid from eight (8) percent to four (4) percent.

PROJECT:	Foodservice Concessions - RFP 01-05 Package Two												
PROJECT NO.:	RFP No. MDAD-01-05												
PROJECT LOCATION:	Miami International Airport												
COMPANY NAME:	Areas USA, Inc., now known as Areas USA MIA, LLC												
TERM OF AGREEMENT:	eight (8) years												
OPTIONS TO RENEW:	Two (2) one-year terms												
RECOMMENDED MODIFICATION:	Change the annual MAG recalculation to CPI methodology and reduce the Taxi Lot Snack Bar percentage fee from eight (8) percent to four (4) percent												
CONTRACT MEASURE:	32 percent Airport Concession Disadvantaged Business Enterprise (ACDBE) goal												
CONTRACT MEASURES ACHIEVED AT AWARD:	34.4 percent												
CONTRACT MEASURE ACHIEVED TO DATE:	24.7 percent of gross revenues (\$96,611,948.00)												
	<table><tbody><tr><td>CBH MIA LLC</td><td>19.5%</td><td>\$18.80 M</td></tr><tr><td>WC Robinson & Assoc. Inc.</td><td>4.6%</td><td>\$ 4.40 M</td></tr><tr><td>Caribbean Airport Cuisine</td><td>0.3%</td><td>\$ 0.29 M</td></tr><tr><td>Excellent F&P</td><td>0.2%</td><td>\$ 0.18 M</td></tr></tbody></table>	CBH MIA LLC	19.5%	\$18.80 M	WC Robinson & Assoc. Inc.	4.6%	\$ 4.40 M	Caribbean Airport Cuisine	0.3%	\$ 0.29 M	Excellent F&P	0.2%	\$ 0.18 M
CBH MIA LLC	19.5%	\$18.80 M											
WC Robinson & Assoc. Inc.	4.6%	\$ 4.40 M											
Caribbean Airport Cuisine	0.3%	\$ 0.29 M											
Excellent F&P	0.2%	\$ 0.18 M											

Sirely Uniforms	0.1%	\$ 0.05 M
*Total ACDBE Sales	24.7%	\$23.72 M
Total Concession Sales	100%	\$96.61 M
*Rounded		

**COMPANY PRINCIPALS:
GENDER, ETHNICITY AND
OWNERSHIP BREAKDOWN:**

Xavier Rabell, Eduardo Uribe, Fernando Martinez

Areas USA, Inc. is a fully owned subsidiary of Areas S.A.

COMPANY LOCATION:

5301 Blue Lagoon Drive, Suite 690
Miami, Florida 33126

YEARS IN BUSINESS:

43

**PREVIOUS AGREEMENTS
WITH THE COUNTY IN LAST
FIVE (5) YEARS:**

None

LIVING WAGE:

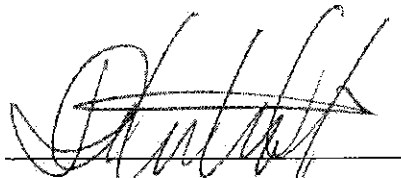
No

INSPECTOR GENERAL:

Provisions included in the agreement

USER AGENCY:

Miami-Dade Aviation Department



Jack Osterholt, Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: May 17, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(A)(8)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(8)
5-17-16

RESOLUTION NO. _____

RESOLUTION APPROVING THE FOURTH AMENDMENT TO THE NON-EXCLUSIVE FOOD AND BEVERAGE LEASE AGREEMENT WITH AREAS USA MIA LLC, FOR PREMISES AT MIAMI INTERNATIONAL AIRPORT; STANDARDIZING THE CONTRACT TERM METHODOLOGY FOR RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE UTILIZED IN SIMILAR LEASE AGREEMENTS; REDUCING THE TAXI LOT SNACK BAR CATEGORY PERCENTAGE FROM EIGHT (8) PERCENT TO FOUR (4) PERCENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Fourth Amendment to the Food and Beverage Lease Agreement with Areas USA MIA LLC standardizing the contract term methodology for recalculation of the Minimum Annual Guarantee, >>reducing the Taxi Lot Snack Bar category percentage from eight (8) percent to four (4) percent<<¹ and authorizing the County Mayor or County Mayor's designee to exercise all provisions therein.

¹ The difference between the substitute and the original item are indicated as follows: words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< constitute the amendment proposed.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairman thereupon declared the resolution duly passed and adopted this 17th day of May, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

GKS for

David M. Murray

**FOURTH AMENDMENT TO
FOOD AND BEVERAGE LEASE AGREEMENT, MIAMI INTERNATIONAL
AIRPORT, BETWEEN MIAMI-DADE COUNTY, FLORIDA AND AREAS USA MIA,
LLC.**

THIS FOURTH AMENDMENT to the Lease and Concession Agreement for Areas USA MIA, LLC (the "Fourth Amendment") is made and entered into this _____ day of _____, 2015, by and between Miami-Dade County acting by and through its Aviation Department ("County" or "MDAD") and Areas USA MIA, LLC ("Concessionaire"), formerly known as Areas USA, Inc..

WHEREAS, by Resolution No. R-196-06, passed and adopted February 7, 2006, the Board of County Commissioners of Miami-Dade County, Florida authorized a Non-Exclusive Lease and Concession Agreement for Food & Beverage Concessions at Miami International Airport.

WHEREAS, the Aviation Department desires to standardize the contract term methodology for Recalculation of the Minimum Annual Guarantee in other similar lease agreements.

WHEREAS, the Aviation Department also recognizes the increasing cost of operating Employee Facilities and the need to provide these services to airport employees.

NOW THEREFORE, in consideration of the premises, and terms and conditions of the Lease and Concession Agreement, the parties to this Fourth Amendment agree as follows:

1. Sub-Article 3.03 "Recalculation of the Minimum Guarantee" is replaced in its entirety as follows:

3.03 RECALCULATION OF THE MINIMUM ANNUAL GUARANTEE: The Minimum Annual Guarantee shall be recalculated annually effective November 1st of each year. An appropriate adjustment will be made to reflect the change in the Consumer Price Index for all urban consumers (CPI-U) in the U.S. City Average; All items, for the published, preceding twelve-month period. The Minimum Annual Guarantee amount is established at \$1,521,743 effective November 1, 2013 based on applying the CPI-U retroactively to contract inception.

2. Sub-Article 3.05 "Concept Category Percentage Fee" is replaced in its entirety as follows:

3.05 CONCEPT CATEGORY PERCENTAGE FEE: The Concessionaire shall pay the Department the Percentage Fee for the corresponding category.

The following is the applicable "Percentage Fee per Category" acceptable for each concept category.

CONCEPT CATEGORY	APPLICABLE PERCENTAGE
FOOD AND BEVERAGE	
Taxi Lot SnackBar	4%
Casual Dining	9%
Branded Concept	10%
Bar	12%
Quick Serve \ Walk-away	14%
Self-Branded	15%
Beer and Wine	15%
Merchandise	15%
Alcoholic Beverage	19%

Employee Facilities are considered essential services provided to two unique airport employee groups at Miami International Airport. The facilities are in non-commercial areas of the Airport. The revenues from the locations do not have any correlation to the market values employed to derive the rental rates and MAG charged for commercial concession spaces.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to the Agreement the date and year first above written,

ATTEST:
Secretary

Clara Olivera
(Signature and Seal)

Director of Corporate & Legal Affairs
(Type Name & Title)

AREAS USA MIA LLC

[Signature]
(Legal Name of Corporation)

By: _____
Authorized Officer - Signature

Name: Jose Alberto Serratos
Vice President

(Type Name & Title)

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
Mayor

Attest: Harvey Ruvlin, Clerk

By: _____
Deputy Clerk

Approved for Form
and Legal Sufficiency

Assistant County Attorney

AREAS MAG RECALCULATIONS AGREEMENT 003022

Effective 11/1/13-10/31/14

MAG \$ 1,878,016
Adjusted MAG \$ 1,521,743

Permanently Locations	Awarded Square Feet	Space ID	Actual Total Sq. Ft.	Propworks LHM	MAG Effective Date	Opened	Rent Effective	PTG %	Base MAG
Illy Coffee	250	602446	279	11	05/28/08	3/28/2003	3/21/2008		65,746
Haganan Daz	250	602448	278	6	04/09/08	5/28/2008	3/27/2008		55,746
Pancos Flamingo Pizzeria	783	602414	769	8	04/17/08	4/8/2008	4/30/2008		156,514
Island Chicken Grill	810	602416	764	7	04/17/08	4/12/2008	4/17/2008		290,838
Bongos	255	602442	374	5	04/17/08	4/17/2008	4/17/2008		843,242
La Pansa	2130	602440	2985	9	04/30/08	5/12/2008	4/30/2008		301,060
Corona Beach House	1720	602510	1695	10	11/17/2008	5/12/2008	4/30/2008		874,442
Recalculation of MAG 11/1/08									

Recalculation of MAG 11/1/08	2171	082781	2015	24	11/1/2009	1/25/2010	12/9/2009		806,588
Corona Beach House-N					12/9/2009	1/25/2010	12/9/2009		1,094,218
Recalculation of MAG 11/1/10	1793	6082990	1679	27	1/15/2011	1/15/2011	1/15/2011		1,027,392
Island Chicken Grill	1362	6082751	1312	25	1/29/2011	2/11/2011	1/29/2011		1,215,731
Wendys*					11/1/2011	11/1/2011	1/29/2011		1,380,000
Recalculation of MAG 11/1/11					11/1/2011	11/1/2011	1/29/2011		1,360,000
Recalculation of MAG 11/1/12					11/1/2012	11/1/2012	1/29/2011		1,747,144
Recalculation of MAG 11/1/13					11/1/2013	11/1/2013	1/29/2011		1,849,351
Recalculation of MAG 11/1/14					11/1/2014	11/1/2014	1/29/2011		1,678,016
Tot. Square Ft	11,522		12,150					105.45%	1,880,315

East of Sandwhich (not part of original award)

support	N/A	602715	1297	25		2/13/2013	2/13/2013		
Support		6050338	215	13			9/27/2007		
Support		11910	457	14			10/15/2007		
Support		11463	158	15			10/16/2007		
temp corona		6062187	790	21			8/15/2009		
office space		602563	200	16			9/16/2006		
		6084739	218	23			1/1/2011		

Total Annual Rent excluding tax lot cafeteria + tax

\$ 1,257,561

North & South Eps 12month % Change

Using Eps through 11/1/12 then CPI 12month % Change as of 11/1/13

FY Year Preceding 12mo % Chg 1,849,331

2008 3.7%

2009 -0.2%

2010 1.2%

2011 3.5%

2012 2.2%

2013 1.0%

2014 1.7%



Using CPI 12month % Change from contract inception

FY Year Preceding 12mo % Chg

2008 3.7%

2009 -0.2%

2010 1.2%

2011 3.5%

2012 2.2%

2013 1.0%

2014 1.7%

1,360,000

1,400,500

1,407,499

1,424,589

1,454,263

1,506,676

1,521,743

1,547,613